

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 01-11287

Order

The relief set forth on the following pages, for a total of 6 pages including this page,  
is hereby ORDERED.

---

**FILED BY THE COURT**  
**01/30/2003**



Entered: 01/30/2003

US Bankruptcy Court Judge  
District of South Carolina

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:	)	Chapter 13
	)	
John Barry Rosier,	)	Case No. 01-11287-W
	)	
Debtor.	)	<b>ORDER</b>
_____	)	

THIS MATTER comes before the Court upon the Objections to Proof of Claim (the “Objections”) filed by John Barry Rosier (“Debtor”). According to Debtor, the three proofs of claim that Brenda Rosier (“Creditor”) filed on December 26, 2001 represent claims based upon a marital property settlement, and these claims are not contractually supported as filed by Creditor and should be allowed as an unsecured claim totaling \$35,000. Creditor did not respond to the Objections. After reviewing Debtor’s Affidavit and the pleadings, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. On October 24, 2001, Debtor filed this Chapter 13 bankruptcy case.
2. In Schedule F, Debtor lists that he owes Creditor \$35,000 and that this obligation is general unsecured debt.
3. On December 26, 2001, Creditor, Debtor’s former spouse, filed three proof of claims. In the Court’s Claims Register, these claims are listed as Claims 6, 7, and 8.
4. Claim 6 is in the amount of \$17,178.60. This claim indicates that it is an unsecured priority claim because it for is alimony, maintenance, or support owed to a former spouse. Specifically,

Creditor alleges that the claim is for her one-half interest in a Pepsico Long Term Savings 401(k) account (the “Pepsico Account”).

5. Claim 7 is in the amount of \$15,974.56. This claim indicates that it is an unsecured priority claim because it is for alimony, maintenance, or support owed to a former spouse. Specifically, Creditor alleges that the claim is for child support arrearage.

6. Claim 8 is in the amount of \$16,000.00. This claim indicates that it is an unsecured priority claim because it is for alimony, maintenance, or support owed to a former spouse. Specifically, Creditor alleges that the claim is for rehabilitative maintenance.

7. Creditor attached to her proofs of claim copies of excerpts of the parties’ divorce decree, which was entered on May 10, 2001 in the Johnson Circuit Court in Kentucky. The decree addresses the division of the parties’ property as well as issues of child support and rehabilitative alimony.

8. As part of the property division, the decree awards Creditor one-half of the accumulated value of Debtor’s Pepsico Account from April 19, 1986 until February 8, 1999. The Pepsico Account is valued as worth approximately \$34,357.19.

9. The decree orders Debtor pay child support in the amount of \$521 per month.

10. The decree orders Debtor to pay temporary rehabilitative maintenance for four years in the amount of \$2,000.00 per year in two annual installments.

11. Debtor’s Affidavit states that he did not submit one-half of the Pepsico Account to Creditor as ordered in the decree.

12. Debtor’s Affidavit also states that he does not owe any past due child support.

13. Debtor’s Affidavit also states that he has not made any of \$2,000 rehabilitative maintenance

payments as ordered in the decree.

## CONCLUSIONS OF LAW

Debtor objects to Creditor's three claims and argues that the claims should be classified as general unsecured claims. Debtor's Affidavit and Creditor's proof of claims with the excerpts of the divorce decree are the only evidence before the Court.

Allowed proofs of claims for certain debts owed to a former spouse or child are entitled to full payment and priority status under 11 U.S.C. §1322(a)(2) unless the claimant agrees otherwise.<sup>1</sup> Claims allowed for past due support to a former spouse or child are generally entitled to priority status. See §507(a)(7). However, pursuant to §1328(a)(2), obligations owed that are in the nature of a property settlement are dischargeable and may be treated as general unsecured claims in most instances in Chapter 13 cases. Accordingly, the Court must determine the nature of the obligations owed by Debtor to Creditor and the proper classification of Creditor's claim. See In re Falcon, C/A No. 96-70897-B, slip op. at 4 (Bankr. D. S.C. Jul. 22, 1996). To determine the nature of the obligations at issue, the Court can rely on case law interpreting §523(a)(5) to resolve whether an obligation is in the nature of support or is a property settlement. See id.

In determining the nature of the obligation, bankruptcy courts usually consider whether the family court intended the obligation to be one for support. See Baker v. Baker (In re Baker), 274 B.R. 176, 188 (Bankr. D. S.C. 2000). In addition, courts usually examine other factors as guidance to determine the nature of the obligation. See id. In Baker, the Court considered the following four

---

<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

factors in reaching its conclusion that an obligation was in the nature of support: (1) the actual substance and language of the divorce decree or property settlement agreement, (2) the financial situation of the parties at the time of the decree or agreement, (3) the function served by the obligation at the time of the agreement, and (4) whether there is any evidence that causes a court to question the intent of a spouse. See id. at 189 (citing In re Catron, 164 B.R. 912, 919 (E.D. Va. 1994), aff'd 43 F.3d 1465 (4<sup>th</sup> Cir. 1994)).

Addressing Claim 6, the award of one-half of the accumulated value of Debtor's Pepsico Account to Creditor, the Court finds that the divorce decree does not classify this award as support. In fact, the award of the Pepsico Account is in the section of the divorce decree that deals with the division of the parties' other marital property. In addition, Debtor asserts that the parties intended to distribute the Pepsico Account as part of their property settlement. Based upon the evidence before it, the Court finds that Claim 6 appears to be in the nature of a property settlement and should be treated as a general unsecured claim. See Falcon at 11.

Addressing Claim 7, the child support arrearage, the Court finds that Debtor's Affidavit indicates that all child support payments have been made to Creditor either directly or through the family court. Creditor's Claim 7 does not attach any supporting documents that would lead this Court to believe that arrears are currently due. Moreover, there was no response to Debtor's Objection. As such, this Court finds that the claim of \$16,123.00 should be denied in its entirety.

Addressing Claim 8, the \$16,000 obligation to Creditor, the Court finds that the divorce decree describes this obligation as "rehabilitative maintenance." The plain language of the decree suggests that the nature of this obligation is for support. Based on its interpretation of the decree, the Court finds that

this obligation is in the nature of support and should be paid in full through the Debtor's Chapter 13 Plan.

It is, therefore,

**ORDERED** that Claim 6 of Creditor for \$17,178.60 is in the nature of a property settlement and shall be treated as a general unsecured claim;

**IT IS FURTHER ORDERED** that Claim 7 of Creditor for \$15,974.56 for past due child arrears is without merit or supporting documentation and is denied in its entirety; and

**IT IS FURTHER ORDERED** that Claim 8 of Creditor for \$16,000.00 is in the nature of support and should be paid in full in the Debtor's Chapter 13 Plan.

**AND IT IS SO ORDERED.**